

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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KENYATTA THOMPSON,

Plaintiff,

-against-

THE CITY OF NEW YORK, POLICE OFFICER CHARLES MCDONALD, POLICE OFFICER LEWIS ORTIZ, POLICE OFFICER RICHARD ARROYO, DETECTIVE RONALD REYNOLDS, DETECTIVE JENNIFER LAVELLE, AND SERGEANT DOMENICO COLAVITO of the NEW YORK CITY POLICE DEPARTMENT,

10-CV-4972

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

MR

★ APR 29 2011 ★

BROOKLYN OFFICE

Defendants

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TOWNES, United States District Judge:

Plaintiff Kenyatta Thompson brings this action alleging false arrest, illegal imprisonment, and violations of plaintiff's Fourth and Fourteenth Amendment rights. Plaintiff commenced this action by filing a complaint on October 28, 2008, and defendants filed an answer on February 24, 2011. Plaintiff subsequently filed an amended complaint on April 15, 2011, adding former sergeant Domenico Colavito ("Colavito"), and police officer Lewis Ortiz ("Ortiz"), both retired from the New York City Police Department, to the action. Defendants the City of New York, New York City Police Department, and Police Officer Charles McDonald ("defendants") now move pursuant to Rule 72(a) of the Federal Rules of Civil Procedure, objecting to the Honorable Magistrate Judge James Orenstein's Order issued on April 26, 2011, directing defendants to produce by April 29, 2011, the home addresses of Colavito and Ortiz.

**Discussion**

Although defendants move pursuant to Rule 72(a), defendants' letter to the Court argues that the amended complaint should be stricken as untimely. Defendants allege that although they

provided plaintiff with a list of every officer involved in the alleged incident on February 7, 2011, plaintiff chose not to name these officers as defendants until over two months later on April 15, 2011. Defendants allege that the statute of limitations expired on November 4, 2010<sup>1</sup>, and ““plaintiff’s failure to amend is not a mistake that would allow him to relate back under Rule 15(c).”” [Defendant’s April 28, 2011 letter at 3] quoting *Dominguez v. City of New York*, 2010 U.S. Dist. LEXIS 88818, \*4 (E.D.N.Y. 2010). Defendants further argue in the alternative, that they be given thirty days to ascertain if the police officers would accept service at 1 Police Plaza, instead of their home addresses.

In light of the fact that defendants’ letter is styled as a motion to strike the amended complaint, not a motion pursuant to Rule 72(a), the Court orders supplemental briefing of this issue. Parties shall address the timeliness of plaintiff’s amended complaint according to: 1. the statute of limitations in this case; and 2. Federal Rule of Civ. P. 15(a)(1)(B), which allows a party to amend its complaint as a matter of right 21 days after service of a responsive pleading. FRCP 15(a)(1)(B). The Court notes that plaintiff filed her amended complaint over seven weeks after defendants’ February 24, 2011 answer without defendants’ written consent or the court’s leave, as required by Rule 15(a)(2).

Defendants shall file their motion on or before May 6, 2011. Plaintiff shall file her response on or before May 13, 2011. Defendants shall have until May 16, 2011 to file a reply, if any. Magistrate Judge Orenstein’s April 26, 2011 Order directing defendants to produce by April 29, 2011 the home addresses of Colavito and Ortiz is stayed pending resolution of defendants’

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<sup>1</sup>The Court notes that defendants’ letter states, “Plaintiff’s statute of limitations expired on November 4, 2011,” however, defendants appeared to have meant November 4, 2010, three years after plaintiff claims she was falsely arrested on November 4, 2007. Claims for false arrest accrue on the date of the arrest and have a three-year statute of limitations. *McIlwain v. Perez*, 1997 WL 38085 at \*2 (E.D.N.Y. 1997).

motion.

### **III. Conclusion**

Defendants shall file supplemental briefing on their motion to strike the amended complaint on or before May 6, 2011. Plaintiff shall file her response in opposition on or before May 13, 2011. Defendants shall have until May 16, 2011 to file a reply, if any. Magistrate Judge Orenstein's April 26, 2011 Order directing defendants to produce the home addresses of Colavito and Ortiz, by April 29, 2011, is stayed pending resolution of this motion.

**SO ORDERED.**

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SANDRA L. TOWNES  
Judge Sandra L. Townes  
United States District Judge

Dated: Brooklyn, New York  
April 29, 2011